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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,540	04/11/2001	John T. Brown	SP00-130	4778
22928	7590	11/16/2004	EXAMINER	
CORNING INCORPORATED			LOPEZ, CARLOS N	
SP-TI-3-1				
CORNING, NY 14831			ART UNIT	PAPER NUMBER
			1731	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/833,540

Applicant(s)

BROWN ET AL.

Examiner

Carlos Lopez

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 22 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-3, 5-53.Claim(s) withdrawn from consideration: 54-222.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments filed 10/22/04 have been fully considered but they are not persuasive. Applicant's previously presented arguments in page 33 have been fully responded to in the Advisory Action mailed on 9/28/04. Applicant now further argues that the Examiner has used improper hindsight reconstruction. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The knowledge gleaned from Heitmann, as best noted by applicant in page 34 notes the following: "Notably, Heitmann admits that its process "may still contain a certain OH concentration" and therefore requires additional drying steps (Col. 4, lines 10-15)."

The fact that Heitmann requires further drying clearly shows a further reduction in the amount of water in the preform is needed. A person of ordinary skill in the art would thus readily appreciate the teachings provided by Siegfried. Siegfried teaches that providing hydrogen free fuel avoids incorporation of water into the preform. Hence, at the time the invention was made it would have been obvious to a person of ordinary skill in the art to provide a hydrogen free fuel to thus further reduce water incorporation into the preform.

Applicant also argues that the use of CO is less than desirable because CO is a very poisonous gas. Indeed CO is a very poisonous gas however CO is not being used for human consumption but for the manufacturing of preforms. Applicant is referred to instant claim 17, which claims the use of CO as hydrogen free fuel, albeit poisonous and undesirable as deemed by applicant but suitable for the manufacturing of a preform.

Applicant also argues that the use of a CO flame has a propensity to blow itself out and that applicant has used certain additives to reduce the propensity of the burner to extinguish itself. Siegfried in Col. 6 lines 65ff teaches of using other types of hydrogen free fuels such as CS₂ and C₂N₂, not just carbon monoxide.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CL.


STEVEN P. GRIFFIN

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